

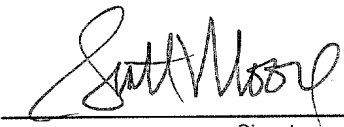
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 5577-350	
I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on November 26, 2007. Signature <u>Candi L. Riggs</u> Typed or printed name <u>Candi L. Riggs</u>		Application Number 09/808,501	Filed 3/14/01
		First Named Inventor John Anthony Beaver	
		Art Unit 2193	Examiner Insun Kang
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. 42,011 Registration number <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34		 Signature D. Scott Moore Typed or printed name 919/854-1400 Telephone number November 26, 2007 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 2193**

Attorney Docket No. 5577-350 (GB920000055US1)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: John Anthony Beaven et al.	Confirmation No.: 3614
Serial No.: 09/808,501	Group Art Unit: 2193
Filed: March 14, 2001	Examiner: Insun Kang
For: METHOD, SYSTEM AND COMPUTER PROGRAM FOR DERIVING AND APPLYING QUALITY OF SERVICE SPECIFICATIONS IN A COMPONENT- BASED DEVELOPMENT ENVIRONMENT	

Date: November 26, 2007

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**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to IBM Deposit Account No. 09-0461.

REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed August 24, 2007 (hereinafter "Final Action").

Applicants respectfully submit that the rejections of the currently pending claims are clearly erroneous because many of the recitations of the pending claims are not met by the cited reference for at least the reasons discussed herein and in Applicants' previously filed Amendment of June 5, 2007. Moreover, Applicants respectfully submit that Claims 1 and 3 – 17 recite patentable subject matter. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of independent Claims 1 and 18.

Section 101 Rejections

Claims 1 and 3 - 17 stand rejected under 35 U.S.C. §101 as being non-statutory as allegedly being directed to a computer system without any physical structural elements and as also being directed to a disembodied arrangement without creating any functional relationship. (Final Action, page 2). Applicants respectfully disagree. As explained on page 16, line 24 through page 18, line 2 of the Specification, the various specification elements recited in Claim 1 can be embodied as a computer program product. Thus, Claim 1 is directed to a general-purpose computer system that is configured to perform the operations associated with the various specification elements. The Court of Appeals for the Federal Circuit in *In re Alappat*, 33 F.3d 1526 (Fed. Cir. 1994) held that a programmed general-purpose computer constitutes patentable subject matter. "This is not a disembodied mathematical concept which may be characterized as an 'abstract idea,' but rather a specific machine to produce a *useful, concrete, and tangible result*." *Id.* at 1544. (Emphasis added). Accordingly, Applicants submit that independent Claims 1 and 3 - 17, which are directed to a programmed computer system, qualify as statutory subject matter under 35 U.S.C. §101.

The Final Action further rejects independent Claim 1 as being directed to a "...disembodied arrangement without creating any functional interrelationship." (Final Action, page 2). Claim 1 recites that the quality of service specification derivation element has an application model in combination with a quality of service specification as an output. The quality of service specification is derived by implication from relations between the components, control flows, data flows, and resources. Thus, the quality of service specification derivation element ties together the component specification element, the control flow specification element, the data flow specification element, and the resource specification element. Thus, Claim 1 is not merely an aggregation of information or data, but is instead a system that comprises multiple elements that cooperate with one another so that an application model and a quality of service specification can be output. Applicants submit, therefore, that Claims 1 and 3 - 17 qualify as statutory subject matter under 35 U.S.C. §101.

Independent Claims 1 and 18 are Patentable

Independent Claims 1 and 18 stand rejected under 35 U.S.C. §102(e) as being anticipated by U. S. Patent Publication No. 2002/0059079 to Negri (hereinafter "Negri"). (Final Action, page 3). Independent Claim 1 is directed to a system for component-based processing and recites, in part:

...
a component specification element that specifies components; a control flow specification element that specifies control flows; a data flow specification element that specifies data flows; a resource specification element that specifies resources; and a quality of service specification derivation element, the quality of service specification derivation element having for output an application model in combination with a quality of service specification derived by implication from relations between the components, the control flows, the data flows and the resources; wherein said quality of service specification is made available to a runtime engine for deployment as a runtime contract in a runtime processing environment.
(Emphasis added.)

Independent Claim 18 includes similar recitations. As highlighted above, independent Claim 1 recites five distinct elements: a component specification element, a control flow

specification element, a data flow specification element, a resource specification element and a quality of service specification derivation element. In rejecting independent Claims 1 and 18, the Final Action cites the description of Negri's eService business model, which begins at paragraph 45. In particular, Negri defines the aspects of the eService model in paragraphs 48 – 50. While Applicants acknowledge that Negri discloses defining components of a service, which may be software and/or physical elements (Negri, paragraph 48). Applicants respectfully submit that Negri does not disclose or suggest defining a control flow specification element, a data flow specification element, a resource specification element, and/or a quality of service specification derivation element.

The Final Action cites the following sentence from paragraph 46 of Negri as disclosing the control flow specification element and the data flow specification element: "The business process involves the flow of data and control through a complex arrangement of these components coupled to the web server and client interface." (Final Action, page 3). Negri, however, does not disclose or suggest creating elements that specify the particular data flows and control flows as recited in independent Claims 1 and 18.

The Final Action cites the reference in paragraph 50 of Negri to the components sharing common resources as disclosing the resource specification element. (Final Action, page 4). Negri, however, does not disclose or suggest creating an element that specifies the resources in the eService model. Negri merely explains that components can share common resources. (Negri, paragraph 50).

The Final Action cites the recitation in Claim 1 of Negri directed to deriving an e-service management strategy as disclosing the quality of service specification derivation element. (Final Action, page 4). Negri describes deriving an e-service management strategy based on a business process specification where the e-service management strategy is used to ensure the quality of the e-service. (Negri, claim 1). The quality of service specification derivation element of Claim 1, however, outputs **both** an application model and a quality of service specification. Negri does not appear to disclose or suggest outputting an application model in addition to the e-service management strategy.

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Serial No.: 09/808,501
Filed: March 14, 2001
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For at least the foregoing reasons, Applicants respectfully request that the present application be reviewed and that the rejection of independent Claims 1 and 18 be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,

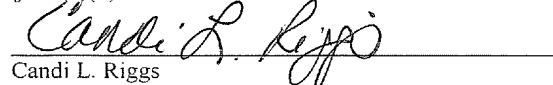


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CERTIFICATION OF TRANSMISSION

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Candi L. Riggs